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Date: 26 February 2021

Dear Stakeholder,

Non-Domestic Renewable Heat Incentive (RHI) Environmental Permitting Regulatory Position Statement (RPS)

This open letter explains Ofgem's proposed administrative approach to dealing with RHI accreditation applications where the applicant is operating their plant under the 'Medium combustion plant (MCP) section 5.1 Part B new permits: RPS 244'¹ while the Environment Agency (EA) is determining their application for an environmental permit (EP). This applies to MCP with a capacity more than or equal to 1 megawatt thermal (MWth) and less than 50MWth burning any fuel. However, we understand that the affected plants on the RHI are operating in England, utilising solid biomass in respect of clean waste wood as a fuel source².

We have considered the impact of the RPS put in place by the EA on prospective RHI participants, especially in light of scheme closure on 31 March 2021³.

Background

The RHI Scheme Regulations 2018 (as amended) require prospective participants and participants to hold an environmental permit, or an RHI emissions certificate, in relation to their plant⁴. The RHI regulations define an environmental permit as:

"a permit issued in accordance with the provisions of the Environmental Permitting (England and Wales) Regulations 2016 or the Pollution Prevention and Control (Scotland) Regulations 2012"

Prospective participants must provide evidence of an environmental permit where it is required by the eligibility criteria of the RHI scheme.

¹ <https://www.gov.uk/government/publications/medium-combustion-plant-mcp-section-51-part-b-new-permits-rps-244>

² [Medium combustion plant \(MCP\) section 5.1 Part B new permits: RPS 244 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/medium-combustion-plant-mcp-section-51-part-b-new-permits-rps-244)

³ For more information on scheme closure, please refer to the Ofgem website:

<https://www.ofgem.gov.uk/environmental-programmes/non-domestic-rhi/about-non-domestic-rhi/ndrhi-closure>

⁴ The Renewable Heat Incentive Scheme Regulations 2018. No. 611. Part 2, Regulation 5(1).

The RPS

The EA published the 'Medium combustion plant (MCP) section 5.1 Part B new permits: RPS 244' on 2 October 2020 to alleviate their backlog of environmental permitting applications as a result of the COVID-19 pandemic.

The purpose of RPS 244 is to allow prospective participants, who comply with the conditions of the RPS, to operate qualifying biomass boilers in the absence of an EP whilst the EA determine their EP applications.

This RPS only applies if a new permit application has been submitted to the EA and an acknowledgement of the application has been received by the prospective participant from the EA. It will apply to all applications that the EA have acknowledged on or before 30 June 2021. The EA have also confirmed that this RPS is independent of the permit determination process and utilising this interim route does not mean an EP application will be successful.

Ofgem's Proposed Approach

We propose to continue assessing accreditation application for biomass installations with a capacity of more than or equal to 1 megawatt thermal (MWth) and less than 50MWth in England, where the plant(s) is operating under the RPS 244. This approach will not apply to plant(s) operating in Scotland or Wales, as Scottish Environment Protection Agency (SEPA) and Natural Resources Wales (NRW) are operating a normal service.

Where we would usually expect to receive evidence confirming that the relevant EP has been granted, we will instead expect prospective participants to confirm that they are intending to operate their plant under RPS 244 and provide proof of acknowledgement from the EA that the EP application has been received.

Where we determine that an installation meets all other RHI eligibility requirements, such that accreditation would usually be granted, we will progress the application.

Ofgem may attach conditions upon granting accreditation to prospective participants. These depend on the circumstances of the application and will be determined on a case-by-case basis. In circumstances where the prospective participant is operating their plant under the RPS 244, Ofgem will add a condition to the accreditation requiring the prospective participant to notify us of the outcome of their EP application.

A draft example of the condition that will be attached to these accreditations is provided below:

You have stated that the plant is currently operating under the EA RPS 244. This is significant as it means that confirmation that the necessary environmental permit has been granted cannot be provided as required by the Renewable Heat Incentive Scheme Regulations 2018 (as amended).

This accreditation has been granted in respect of RHI installation XXXX. Based on the information you provided to us and in accordance with our obligations under the RHI, we have recorded that the plant is operating under RPS 244.

Should we become aware that the installation has at any time failed to operate in line with the requirements of the RPS or that the environmental permit application is determined and subsequently refused by the EA, we will revisit the information provided to us on which the accreditation has been granted. Should we determine that your installation does not have the necessary environmental permits, accreditation may be revoked.

You will note from the conditions of this accreditation that we may send an independent auditor to assess your installation and that we may request further information from you in respect of it.

As indicated in the draft condition, should the EA determine the application and refuse to grant a permit, Ofgem will review the RHI accreditation and may take any appropriate compliance or enforcement action, including revocation. Monitoring compliance with this requirement will be supported with data sharing between Ofgem and the EA.

Views sought

We welcome stakeholder views on whether they agree with our proposed approach or whether there are significant issues that we have not identified. We would also welcome any comments on additional guidance that would be useful to prospective participants at this time.

Next steps

We have been contacted by a number of prospective participants who are affected by this scenario. We intend to adopt this approach from the date of publication of this letter. As such, we will be seeking to progress our proposed approach in advance of scheme closure.

We would be grateful for your feedback on our proposed approach by no later than close of business 8 March 2021. Please send any comments to RenewableHeat@ofgem.gov.uk.

Yours sincerely



Carmel Golden
Head of Scheme Portfolio